

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 155 of 1982

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

JAGDISHCHANDRA N DESAI

Appearance:

MR ST MEHTA AGP for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/10/2000

ORAL JUDGEMENT

This appeal has been preferred by the defendant State of Gujarat in Regular Civil Suit No. 10 of 1974 against the judgment and order dated 16th November, 1981 passed by the learned Joint District Judge, Junagadh in Regular Civil Appeal No. 107 of 1978 arising of the

judgment and order dated 14th August, 1978 passed by the learned Civil Judge (SD), Junagadh in Regular Civil Suit No. 10 of 1974.

The plaintiff at the relevant time was serving as an Aval Karkun (redesignated as Deputy Mamlatdar) in Junagadh District. It was contended that the plaintiff had entered the Revenue Service of the erstwhile State of Saurashtra on 24th February, 1956 and on reorganisation of States, he was absorbed in the service of the State of Bombay. On bifurcation of the State of Bombay in the year 1960, he was allocated to the State of Gujarat and continued in service as a Clerk in the Revenue Department of the State of Gujarat. In the year 1966, he was promoted as Aval Karkun but was reverted on 5th July, 1967. Time and again he was thus promoted as Aval Karkun and was reverted to the cadre of Clerk. Last he was promoted on 21st January, 1971. However, apprehending that he would again be reverted to the post of Clerk, he instituted the above referred Regular Civil Suit No. 10 of 1974 in the Court of Civil Judge (SD), Junagadh. It was contended that in the State of Saurashtra, the promotion to the post of Aval Karkun was made from amongst the Clerks in order of seniority, however, on reorganisation of the States and formation of the State of Gujarat, the State of Gujarat had decided to remove disparity in the matter of promotion to the post of Aval Karkuns and had in the year 1962, issued a Resolution introducing Revenue Qualifying Examination and made it a pre-requisite for promotion to the post of Aval Karkun. Even the seniority in the cadre of Aval Karkun was governed by the date of passing of the said Revenue Qualifying Examination and the rank therein. The said Resolution of 1962 was followed by the Statutory Rules of 1966. It was further contended that the said Resolution and the Rules were contrary to Section 115 (7) of the States Reorganisation Act, 1956 and the Section 81 (6) of the Bombay Reorganization Act, 1960. It was further contended that any reversion made on account of non-passing of the Revenue Qualifying Examination was in contravention of the provisions contained in Article 311 (2) of the Constitution of India. He, therefore, prayed for a declaration that the Government Resolution dated of 1962 and the Rules of 1966 were void and for a direction that the State of Gujarat should maintain the seniority of Aval Karkun without reference to the passing of the Revenue Qualifying Examination and the promotion be made in accordance with the seniority in the cadre of Clerk. The suit was duly contested. The State Government filed its written statement at Exh. 15.

The learned trial Judge by his judgment and order dated 14th August, 1978 was pleased to hold that the introduction of the Revenue Qualifying Examination in so far as it was made applicable to the employees of erstwhile State of Saurashtra was in contravention of Section 115 (7) of the State Reorganisation Act, 1956 and Section 81 (6) of the Bombay Reorganisation Act, 1960. The learned trial Judge relied upon the judgment of this Court [Coram : Mr. Justice B.J Divan, as he then was] passed in Special Civil Application No. 1030 of 1969 and other writ petitions on 3rd December, 1970 and held that, 'the plaintiff who joined service as a Clerk in the State of Saurashtra had passed the sub-service examination and thus was a confirmed clerk and was not required to pass the Revenue Qualifying Examination and if promoted as Aval Karkun, cannot be reverted only because he had not passed the Revenue Qualifying Examination; his seniority in the cadre of Aval Karkun also should not be affected merely because he had not passed the Revenue Qualifying Examination. The suit was accordingly decreed. Feeling aggrieved, the State preferred Regular Civil Appeal No. 107 of 1978 which too was dismissed on 16th January, 1981. Feeling aggrieved, the State has preferred the present appeal.

The following substantial questions of law have been framed for consideration by this Court :-

(A) Whether in the facts and circumstances of the case the Lower Appellate Court has committed any error in holding that the State of Gujarat was competent to frame the rules for passing Revenue Qualifying Examination before the promotion to the post of Aval Karkun ?

(B) Whether in the facts and circumstances of the case the Lower Appellate Court has committed an error in not following the decision of the Hon'ble Gujarat High Court in Special Civil Application No. 995 of 1974 and allied matters which were decided on 12th January, 1979 [Coram : S.H Sheth & N.H Bhatt, JJ.] in which it was held that the State of Gujarat was competent to frame rules regarding conducting of Revenue Qualifying Examination and it did not amount varying any service condition of the employees.

It must first be noticed that neither the Government Resolution of 1962 nor the Rules of 1966 have been produced on the records of the matter. The first question which is required to be answered is whether the State of Gujarat could have prescribed the Revenue Qualifying Examination as a pre-requisite for promotion to the post of Aval Karkuns inasmuch as it affected the promotional chances of the employees of the erstwhile State of Saurashtra. The question has squarely been answered by the Hon'ble Supreme Court in the matter of J.K Vasavada & Ors. v. Chandrakanta Chimanlal Bhavsar & Anr. [AIR (1975) SC 2089]. In paragraph 8 of the said judgment, the Court has held that, '...In respect of all Government servants who were allotted to the reorganised State of Bombay, Section 115 (7) of the States Reorganisation Act applied. It was under the proviso to that section that the above mentioned circular of May 11, 1957 was issued by the Government of India. Under that circular, it was open to the reorganised State of Bombay to make any rules for promotion of its servants which were not applicable to them before the formation of the reorganised State of Bombay. In other words, the reorganised State of Bombay had the right to make rules regarding those Government servants including the parties in this case. The reorganised State of Bombay could have made rules making the G.D.C & A a necessary qualification for promotion even though there was no such rule earlier. Therefore, the conditions of service of the servants of the reorganised State of Bombay before 1st of May, 1960 included a condition that they would be subject to any rule made by that State in respect of their promotion. The power granted to the reorganised State of Bombay should be deemed to accrue to the successor States, that is, States of Maharashtra and Gujarat.'

As a result of the said discussion, the Court concluded that, '...the result is that the order of the Government of Gujarat State of 1962 laying down the G.D.C & A Examination as a necessary qualification for promotion should be held to be valid.' Hence, as held in the above judgment, the Government of Gujarat was acting within its power in framing the rules, making the Revenue Qualifying Examination a necessary qualification for promotion to the post of Aval Karkun, even though there may not be such rules or examination governing the service of the plaintiff in the erstwhile State of Saurashtra. It should also be noticed that the judgement relied upon by the Courts below does not hold the field and has been reversed in appeal by the Division Bench of

this Court. In the matter of B.K Rao & Anr. v. State of Gujarat & Ors., [Special Civil Application No. 995 of 1974, Decided on 12th January, 1979], the Division Bench of this Court [Coram : M/s. Justice H.S Sheth & N.H Bhatt, as they then were] has negatived the similar claim made by the Revenue Clerks appointed in the erstwhile State of Saurashtra and allocated to the State of Gujarat. The said judgment has also been confirmed by the Hon'ble Supreme Court in the matter of B.K Rao & Anr. v. State of Gujarat & Ors. [1982 (2) GLR 300].

In the matter of State of Gujarat & Anr. v. K.A Patel & Ors., [XIV (1973) GLR 730], the very resolution of 28th December, 1962 and the Government Notification dated 14th June, 1966 were the subject matter of consideration by the Division Bench of this Court. Considering all the arguments advanced in challenge to the said Resolution and the Government Notification, the same were upheld with respect to its applicability to the erstwhile employees of the State of Saurashtra allotted to the State of Gujarat. The Court held that, "...it is not correct to say that on 22nd July, 1966 when these rules were enacted, there was no Revenue Qualifying Examination in the Saurashtra Districts. The Government Resolution dated 28th December, 1962 clearly postulated that Revenue Qualifying Examination was being held in the Saurashtra Districts and it actually sought to bring about 'as much uniformity as possible in the rules and orders prevailing in all the Divisions of the State in the interest of uniform treatment in respect of service in all the Divisions'. Clause-2 of the Government Resolution dated 28th December, 1962 deleted Rule 6 (a) of the Departmental Examination Rules published in the Notification dated 19th April, 1954 issued by the ex-State of Saurashtra and made the Bombay Revenue Qualification Examination Rules in respect of permission to appear for the Revenue Qualifying Examination applicable to the Saurashtra districts. The Government Notification dated 14th June, 1966 also prefaced the rules and syllabii for the Revenue Qualifying Examination by saying that the Revenue Qualifying Examination is being held 'according to Ex-Bombay State Rules and Ex-Saurashtra Rules' and the question, therefore, of unification of these two sets of examination was under consideration of Government and the Government had accordingly decided to prescribe Rules and syllabi for the examination in all the Divisions of the State. ... But the fact remains that the Revenue Qualifying Examination was being held in Saurashtra District according to Ex-Saurashtra Rules and by the Government Resolution dated 28th December, 1962. A change was made

in the mode of selection of candidates for grant of permission to appear at the examination and by Government Notification dated 14th June, 1966, a common set of rules and syllabii was prescribed for all the Districts in the State."

The contention that the reversion of an Aval Karkun on the ground of his having not passed Revenue Qualifying Examination would be violative of Article 311 (2) of the Constitution of India was also negatived by the Court. The court held that the reversion of an officiating Government servant does not amount to reduction in rank which would attract the applicability of Art. 311 (2). 'If the reversion of an Aval Karkun is made, retaining those who have passed the Revenue Qualifying Examination, it cannot be said that reversion is based on irrational or invalid principles.' It further held that, 'if, therefore, the petitioners are reverted in preference to officiating Aval Karkuns who have passed Revenue Qualifying Examination on abolition of posts or to make way for those who are qualified to be confirmed in the cadre of Aval Karkuns when the petitioners can never be confirmed and would always remain officiating, it cannot be said that the reversion is based on any irrational or unjust ground. It would be a valid principle of reversion not violative of Article 16.'

This answers both the questions arising in this appeal. Neither the plaintiff was absolved from passing the Revenue Qualifying Examination being an employee of erstwhile State of Saurashtra nor was he entitled to protection of his seniority. The plaintiff was, therefore, not entitled to either of the reliefs prayed for by him.

In view of the above discussion, the appeal succeeds. The judgments and orders of both the Courts below are quashed and set-aside. The suit is dismissed. The appeal is allowed with costs. The respondent-plaintiff shall bear his own costs and the costs of the defendant throughout.

Prakash*